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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,422	10/23/2003	Douglas Thai	PAT-1336CIP-CON	8371

7590

07/19/2005

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EXAMINER
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HYLTON, ROBIN ANNETTE

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 07/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Taker

**Office Action Summary**

Application No.

10/692,422

Applicant(s)

THAI, DOUGLAS

Examiner

Robin A. Hylton

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --****Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 22-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 22-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>10-23-03</u> . | 6) <input type="checkbox"/> Other: ____  |

## DETAILED ACTION

### *Specification*

1. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

### ***Claim Rejections - 35 USC § 112***

2. Claims 22-29 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification at page 5, line 30 indicates the lining is associated with reference character **96**. Throughout the drawings and in particular in figure 8, the lining is shown as spaced above and apart from the shaft **88**. Thus, the structure of the claims, i.e., the lining around the shaft, is not described in the specification.

3. Claims 22-29 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification at page 5, line 30 indicates the lining is associated with reference character **96**. Throughout the drawings and in particular in figure 8, the lining is shown as spaced above and apart from the shaft **88**. Thus, the structure of the claims i.e., the lining around the shaft, is not enabled by the specification.

4. Claims 22-29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the claims are rejected for the following reasons:

The specification at page 5, line 30 indicates the lining is associated with reference character 96. Throughout the drawings and in particular in figure 8, the lining is shown as spaced above and apart from the shaft 88. Thus, the claims are, at best, inconsistent with the disclosure of the written specification and the drawings. Additionally, how does a lining around the shaft stop the flow of fluid through the tube?

Claims 25-27 recite the limitation "the lid" therein. There is insufficient antecedent basis for this limitation in the claims.

Dependent claims not specifically mentioned are rejected as depending from rejected base claims since they inherently contain the same deficiencies therein.

#### ***Double Patenting***

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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6. Claims 22-24 and 27 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3 and 11 of U.S. Patent No. 6,857,928. Although the conflicting claims are not identical, they are not patentably distinct from each other because each discloses a container having upper and lower body portions, a tube extending from an opening in the upper body portion top wall and an "object" having a shaft in the opening. The patent claims set forth the "object" as a bubble wand, while the instant claims set forth a stopper. It would have been obvious to one of ordinary skill in the art at the time the invention was made to set forth the "object" within the opening as stopper as in the instant application. Doing so provides a broader claim structure.

7. Claims 1-4 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 22-24 and 27 of U.S. Patent No. 6,595,822. Although the conflicting claims are not identical, they are not patentably distinct from each other because discloses a container having upper and lower body portions, a tube extending from an opening in the upper body portion top wall and an "object" having a shaft in the opening. The patent claims set forth the "object" as a bubble wand, while the instant claims set forth a stopper. It would have been obvious to one of ordinary skill in the art at the time the invention was made to set forth the "object" within the opening as stopper as in the instant application. Doing so provides a broader claim structure.

8. Claims 1-7 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 22-28 of U.S. Patent No. 6,638,131. Although the conflicting claims are not identical, they are not patentably distinct from each other because discloses a container having upper and lower body portions, a tube extending from an opening in the upper body portion top wall and an "object" having a shaft in the opening. The patent claims set forth the "object" as a bubble wand, while the instant claims set forth a stopper. It

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would have been obvious to one of ordinary skill in the art at the time the invention was made to set forth the "object" within the opening as stopper as in the instant application. Doing so provides a broader claim structure.

***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 22 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Lawrence (US 2,858,639). Disclosed are lower container body **2**, upper container body **8** having an opening **14**, a tube **5** extending from the opening, and a stopper **18** having a shaft **22** and a lining **23,28** around the shaft. In view of the rejections under 35 USC 112, 1<sup>st</sup> and 2<sup>nd</sup> paragraph above, the lining stops the flow of fluid through the straw to the degree set forth in the claims.

11. Claims 22-24 and 27-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Chen (US 5,282,541). Disclosed are lower container body **3**, upper container body **40** having an opening **400**, a tube **401** extending from the opening, and a stopper having a shaft **5** and a lining **51-55** around the shaft. In view of the rejections under 35 USC 112, 1<sup>st</sup> and 2<sup>nd</sup> paragraph above, the lining stops the flow of fluid through the straw to the degree set forth in the claims.

***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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13. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lawrence.

Lawrence teaches the claimed container except for the opening having a configuration of oval or circular or elliptical.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the opening of one of oval, circular, and elliptical configuration since such a modification would have involved a mere change in the shape of a component. A change in shape is generally recognized as being within the level of ordinary skill in the art.

14. Claims 22-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rossbach et al. (US 5,273,172) in view of Chen.

Rossbach teaches the claimed container comprising a container body having an inner chamber, a bottom wall, a top wall, an opening provided in the top wall, and a tube extending from the opening into the inner chamber to provide communication between the inner chamber and the exterior of the container body; and a stopper positioned inside the tube, the stopper having a shaft, the container body including a lower body **2** that receives liquid therein and having the bottom wall and an open upper mouth; and an upper body **4** having the top wall and an open lower mouth, the upper body being removably connected to the lower body with the open mouths thereof in communication with each other to form the inner chamber, further including a lid **14** pivotably coupled to the top wall and covering the opening, and a hood **5,17** connected to the top wall and cooperating with the lid to completely cover the opening, wherein the lid is pivoted over the hood. Rossbach does not teach a lining provided around the shaft.

Chen teaches it is known to provide a lining **51-55** around a stopper shaft.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a lining around the shaft of the stopper of Rossbach. Doing so provides a better seal between the stopper and the tube and prevents fluid flow. In view of the

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rejections under 35 USC 112, 1<sup>st</sup> and 2<sup>nd</sup> paragraph above, the lining stops the flow of fluid through the straw to the degree set forth in the claims.

**Conclusion**

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Various prior art closures teaching features similar to those disclosed and/or claimed are cited for their disclosures.

16. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 872-9306. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

17. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. \_\_\_\_\_ is being facsimiled to The U.S. Patent and Trademark Office via fax number (703) 872-9306 on the date shown below:

Typed or printed name of person signing this certificate

\_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (571) 272-4540. The examiner can normally be reached Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse, can be reached on (571) 272-4544.



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Any inquiry of a general nature or relating to the status of this application or proceeding may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RAH  
July 13, 2005

A handwritten signature in black ink, appearing to read 'RAH', with a long horizontal flourish extending to the right.

Robin A. Hylton  
Primary Examiner  
GAU 3727